

**United States Department of Labor
Employees' Compensation Appeals Board**

M.S., Appellant

and

**U.S. POSTAL SERVICE, EAU CLAIRE
STATION, Columbia, SC, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 18-0312
Issued: May 17, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 27, 2017 appellant filed a timely appeal from a May 30, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ As more than 180 days elapsed from OWCP's last merit decision, dated April 7, 2016, to the filing of this appeal, pursuant

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from May 30, 2017, the date of OWCP's last decision was November 26, 2017, a Sunday; consequently, the period for filing the appeal ran to the next business day, Monday, November 27, 2017. Since using November 28, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is November 27, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of the claim.³

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 19, 2014 appellant, then a 50-year-old retired city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained arthritis and chondromalacia patella of the bilateral knees, left shoulder arthritis, and a torn rotator cuff causally related to factors of his federal employment. He attributed his condition to his work as a letter carrier. Appellant advised that he was currently "receiving disability for both knees and right shoulder" and that he was submitting his claim to separate these injuries from other accepted conditions.⁴ He stopped work on October 2, 2013.

By development letter dated February 27, 2015, OWCP requested that appellant provide additional factual and medical evidence in support of his claim, including a detailed description of the employment factors that he believed resulted in his condition. It noted that he had retired on March 7, 2014.⁵

In a March 23, 2015 response, appellant related that his condition resulted from "day-to-day activities, and repetitive motion...." He indicated that he had undergone knee surgery in 1984 and right shoulder surgery in 1996.

By decision dated April 10, 2015, OWCP denied appellant's occupational disease claim. It found that he had not established the factual component of his claim as he did not provide a detailed description of the specific work factors identified as causing his condition. OWCP further noted that appellant had not submitted sufficient medical evidence supporting a diagnosed condition due to work factors.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted additional factual and medical evidence after OWCP rendered its May 30, 2017 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

⁴ OWCP accepted that appellant sustained an aggravation of bilateral plantar fasciitis under File No. xxxxxx456.

⁵ On February 24, 2014 the Office of Personnel Management found that appellant was disabled from work as a city carrier due to a torn left shoulder rotator cuff, bilateral knee pain, and bilateral plantar fasciitis.

On January 15, 2016 appellant requested reconsideration.⁶ He submitted a September 26, 2013 letter from the Government Accountability Office (GAO) regarding occupational injuries, including those caused by repetitive motion, at the employing establishment. The letter indicated that “repetitive motions were the most common cause of long-term occupational illnesses regardless of severity or route type.”

By decision dated April 7, 2016, OWCP denied modification of its April 10, 2015 decision. It found that appellant had not submitted specific information identifying the cause of his claimed employment injury, and thus had not demonstrated fact of injury.

On April 4, 2017 appellant requested reconsideration. In a statement dated March 29, 2017, he asserted that the September 26, 2013 letter from the GAO supported that repetitive motion caused the most occupational injuries at the employing establishment. Appellant discussed the GAO findings regarding the percentage of injuries on different routes resulting from repetitive motion. He related that physicians told him that it was very probable that repetitive motion caused his left shoulder injury, but that some doctors refused to complete paperwork when he mentioned a workers’ compensation claim.

By decision dated May 30, 2017, OWCP denied appellant’s request for reconsideration of the merits of his claim under section 8128(a). It found that the evidence submitted was cumulative in nature.

On appeal appellant contends that his physicians were unwilling to attribute his left shoulder injury to his work as a letter carrier. He submits a statement describing his employment duties and history of prior shoulder injuries.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.⁷

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁸

A request for reconsideration must also be received by OWCP within one year of the date of OWCP’s decision for which review is sought.⁹ If OWCP chooses to grant reconsideration, it

⁶ On May 9, 2015 appellant requested a telephone hearing before an OWCP hearing representative. On January 15, 2016 he marked on the appeal request form that he wanted a request for reconsideration instead of an oral hearing.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(3); *see also* L.G., Docket No. 09-1517 (issued March 3, 2010).

⁹ *Id.* at § 10.607(a).

reopens and reviews the case on its merits.¹⁰ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹¹

ANALYSIS

In merit decisions dated April 10, 2015 and April 7, 2016, OWCP denied appellant's occupational disease claim as he failed to submit a detailed description of the work factors that he alleged to have caused his condition. It thus found that he did not establish the factual aspect of his claim. On April 4, 2017 appellant timely requested reconsideration. The issue is whether he has submitted evidence or argument in support of his reconsideration request sufficient to warrant reopening his case for further merit review pursuant to section 10.606(b)(3).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered, or submit pertinent new and relevant evidence. On reconsideration, appellant asserted that the September 26, 2013 letter from the GAO established that repetitive motion caused the majority of occupational injuries at the employing establishment. He discussed the findings from the GAO regarding specific routes and repetitive motion. The Board has held, however, that newspaper clippings, medical texts, and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.¹² The GAO report is not relevant to the underlying issue of whether appellant has sufficiently identified, through the submission of a detailed statement, the work duties to which he attributed his condition. Evidence that does not address the particular issue involved does not warrant reopening a case for merit review.¹³

Appellant asserted that physicians attributed his left shoulder injury to repetitive motion, but would not complete paperwork for a workers' compensation claim. As discussed, however, OWCP, denied appellant's claim as he failed to specifically identify the work factors alleged to have caused his condition. Appellant's assertion is not relevant to the initial underlying question of whether he has factually established his claim.¹⁴

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by OWCP, or submitted pertinent and relevant new evidence not previously considered by OWCP. The Board accordingly

¹⁰ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹¹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹² *See L.C.*, Docket No. 17-0518 (issued July 21, 2017).

¹³ *J.P.*, 58 ECAB 289 (2007); *Freddie Mosley*, 54 ECAB 255 (2002).

¹⁴ *Id.*

finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Therefore, pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board